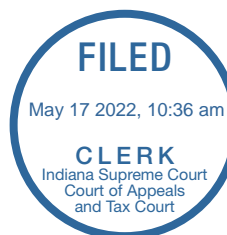


## MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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### ATTORNEY FOR APPELLANT

Jerry T. Drook  
Marion, Indiana

### ATTORNEYS FOR APPELLEE

Theodore E. Rokita  
Attorney General of Indiana

Marjorie Lawyer-Smith  
Deputy Attorney General  
Indianapolis, Indiana

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## IN THE COURT OF APPEALS OF INDIANA

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In the Matter of the Termination  
of the Parent-Child Relationship  
of J.D., H.F., and J.F. (Minor  
Children);

R.D. (Mother),

*Appellant-Respondent,*

v.

Indiana Department of Child  
Services,

*Appellee-Petitioner.*

May 17, 2022

Court of Appeals Case No.  
21A-JT-2791

Appeal from the Grant Superior  
Court

The Honorable Dana J.  
Kenworthy, Judge

Trial Court Cause Nos.  
27D02-2104-JT-52  
27D02-2104-JT-53  
27D02-2104-JT-54

**Najam, Judge.**

## Statement of the Case

- [1] R.D. (“Mother”) appeals the juvenile court’s order terminating her parental rights over her minor children, J.D., H.F, and J.F. (collectively, the “Children”). Mother raises one issue for our review, namely, whether the Indiana Department of Child Services (“DCS”) presented sufficient evidence to support the termination of her parental rights.
- [2] We affirm.

## Facts and Procedural History

- [3] Mother has three children: J.D., born on December 28, 2011; H.F., born on February 23, 2013; and J.F., born on March 17, 2014. Ju.F. (“Father”) signed a paternity affidavit and established his paternity over H.F. and J.F.<sup>1</sup> On June 9, 2016, Mother attempted suicide while the Children were in her care at their home. Mother called 9-1-1 for assistance. Upon their arrival, authorities found controlled substances and paraphernalia in the home. *See Ex.* at 24. DCS removed the Children and ultimately placed them in a foster home. On June 13, DCS filed a petition alleging that the Children were Children in Need of Services (“CHINS”). Mother admitted that the Children were CHINS based on her “unstable mental condition” and the Children’s “exposure to controlled

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<sup>1</sup> Father does not participate in this appeal. J.D.’s father is C.C. C.C. voluntarily relinquished his rights to J.D. during the underlying proceedings.

substances and paraphernalia in the home.” *Id.* at 25. The court adjudicated the Children to be CHINS and ordered Mother to participate in services.

[4] Following a review hearing on January 14, 2021, the court found that Mother had not complied with the Children’s case plan, had not maintained communication with DCS or service providers, had been “in and out of incarceration throughout the reporting period,” had been arrested for “drug-related offenses,” had not been employed, had not completed a parenting assessment, had not participated in random drug screens or substance abuse services, and had not engaged in home-based case management. Appellant’s App. Vol. 2 at 86. Accordingly, DCS filed petitions to terminate Mother’s parental rights over the Children.

[5] Following a fact-finding hearing, the juvenile court entered the following findings of fact and conclusions thereon:

47. Mother has failed to comply with Orders in the CHINS proceedings, and has not improved her ability to safely and permanently parent the [C]hildren. Specifically:

a. Mother did not maintain communication with DCS. Mother had several periods of time during the past 5 years when she failed to maintain communication with DCS, as reflected in the CHINS Orders. [DCS Family Case Manager (“FCM”) Ashley] Evans often had difficulty reaching Mother, because Mother changed phone numbers multiple times throughout the CHINS proceedings, and often did not have cell service. Mother admits that she did not always follow this order.

b. Mother moved and failed to notify DCS of her change of address.

c. Mother has been in and out of incarceration repeatedly since 2014, for offenses including Burglary, Theft, Possession of Methamphetamines, Possession of a Narcotic Drug, Unlawful Possession of a Syringe, Possession of Paraphernalia, Driving While Suspended, Resisting Law Enforcement, False Informing, Maintaining a Common Nuisance, Probation Violations, and Drug Court Violation.

d. Mother was once again incarcerated at the time of the termination proceeding for pending charges of Maintaining a Common Nuisance and Probation Violation.

e. Mother admits that she was charged and convicted of crimes related to drug use in 2017, 2018, and 2020.

f. Abigail Rank, Kosciusko County Drug Court Case Manager, started working with Mother on March 8, 2021 when Mother enrolled in the Drug Court program. To be eligible for Drug Court, Mother's criminal charges must be drug-related and higher than a Level 6 felony. Mother was in full compliance at the beginning of her time in Drug Court, but has not been in compliance recently. Mother was ordered to participate in Narcotics Anonymous/Alcoholics Anonymous, individual and group therapy, random drug screens, and residential treatment. Mother did not complete all services. Mother was kicked out of the first residential treatment facility she entered for failing to report back to [the] facility when ordered. She at first did well at Fellowship Mission, but then tested positive for illegal substances. She also walked out of her employment at Dalton Foundry, after being

offered and admittedly using drugs with her co-workers. Mother admitted to Ms. Rank that she used methamphetamines on April 25, 2021, June 11, 2021 and June 15, 2021. For these reasons, the Drug Court team is recommending that Mother be terminated from the program after [a] hearing on August 5, 2021.

g. Should Mother be allowed to remain in Drug Court, the program is 18 to 24 months long. Mother started the program in March 2021. Should Mother be terminated from Drug Court, she will remain incarcerated, with an earliest possible release date in April 2022, with parole thereafter.

h. Mother has not demonstrated an ability to maintain suitable, safe and stable housing with adequate bedding and functional utilities for herself and [C]hildren. Mother admits she did not maintain suitable housing because she was “in jail a lot.”

i. Mother lived with her mother off and on during the CHINS proceedings, but her mother is not an appropriate placement due to her extensive criminal history. Mother also resided in other locations, including with a boyfriend, in her car, and in residential treatment facilities.

j. At the onset of the CHINS proceedings, the [C]hildren were removed because Mother attempted suicide while the [C]hildren were in her care, and because authorities found illegal substances and paraphernalia in the family’s home.

k. Mother admits that she has had a substance abuse problem for 18 years, with some periods of sobriety during that time. Mother[] admits that her drug of choice is

methamphetamine, she has also experimented with heroin, and has used marijuana.

l. Although Mother has been given multiple opportunities to access substance abuse treatment through the CHINS proceedings and through her criminal matters, Mother has continued to test positive for illegal substances throughout the past 5 years, as recently as mid-2021, and has never completed treatment.

m. Mother admits that she has only done a few substance abuse treatment sessions.

n. Mother admits to using methamphetamines during her current incarceration.

o. Prior to CHINS involvement, Mother obtained her GED at the age of 15 while at Girls School in Indianapolis, and completed a medical assistant degree through Kaplan College in Zionsville in 2010.

p. Although Mother claims she completed services during her periods of incarceration, i.e., Jail Chemical Addiction Program, parenting classes, group therapy, and a financial program, she has never provided certificates of completion for the programs.

q. Over the past 5 years, Mother has demonstrated an inability to maintain employment. Although Mother has had periods of employment, these periods were short-lived, and typically interrupted by new periods of incarceration. Mother was most recently employed at Dalton Foundry prior to her current incarceration, but walked off that job.

- r. In 5 years, Mother never progressed beyond supervised visits with the [C]hildren, and in fact regressed to therapeutically supervised visitation. Mother was inconsistent in visits, and went for long periods of time with no visits at all.
- s. Mother has not visited the [C]hildren in over a year due to her incarceration. She last visited the [C]hildren in May 2020.
- t. Mother has not addressed her personal medical and mental health needs in a timely and complete manner. Mother's mental health issues remain unaddressed. Mother testified that she is on an antidepressant and sleep medication, but did not take her prescriptions for Adderall and a mood stabilizer because she feared they would cause her to relapse.
- u. Mother has never started home based case management as ordered.
- v. Mother admits that she did not keep appointments as ordered.
- w. DCS FCM Evans invited Mother to meetings regarding the [C]hildren approximately every 90 days. Mother sometimes attended. During the last meeting held via Zoom, Mother deliberately hung up halfway through the meeting.
- x. Mother admits that she has "had a long time to get it together."

y. During the termination trial, Mother stated that her goal is to “figure out why I always go back to drugs.”

z. Mother’s lengthy pattern of behavior—for over 5 years—demonstrates that she is not committed to parenting the [C]hildren, nor has she demonstrated any sustained ability to do so.

\* \* \*

53. The [C]hildren have never been returned to Mother’s care since initial removal in June 2016.

\* \* \*

60. The [C]hildren are receiving ongoing services and medication to address their mental and physical health needs.

61. Mother and [Father] have failed to complete court-ordered services necessary for reunification with the [C]hildren, and have failed to demonstrate stability in their own lives or sustained progress in the services in which they did participate for a period of time.

62. DCS recommends termination of parental rights and adoption of the [C]hildren.

63. Charlene Johnson has been a paid staff [Court Appointed Special Advocate (“CASA”)] for approximately 4.5 years. She has served as CASA for the [C]hildren since April 9, 2018. At the beginning of her involvement, CASA recommended reunification. CASA now recommends termination of parental rights and adoption of the [C]hildren. CASA is concerned about Mother’s ability to parent the [C]hildren due to her lack of



commitment, lack of stable housing and employment, lack of sobriety, and repeated periods of incarceration. . . . CASA notes that the [C]hildren are doing “quite well” in their placements. CASA points out that the CHINS proceedings have been going on for 5 years, and the [C]hildren need permanency. CASA believes adoption is in the [C]hildren’s best interest.

64. The conditions that led to the [C]hildren’s removal have not been remedied, nor are they likely to be remedied in the future.

65. Continuation of the parent-child relationship poses a threat to the wellbeing of the [C]hildren.

66. Termination of parental rights is in the [C]hildren’s best interest.

*Id.* at 88-95 (emphasis in original). The court also found that DCS had a satisfactory plan for the care and treatment of the Children. Accordingly, the court terminated Mother’s parental rights over the Children. This appeal ensued.

## **Discussion and Decision**

### ***Standard of Review***

[6] Mother challenges the juvenile court’s termination of her parental rights over the Children. We begin our review of this issue by acknowledging that “[t]he traditional right of parents to establish a home and raise their children is protected by the Fourteenth Amendment of the United States Constitution.” *Bailey v. Tippecanoe Div. of Fam. & Child. (In re M.B.)*, 666 N.E.2d 73, 76 (Ind. Ct. App. 1996), *trans. denied*. However, a trial court must subordinate the interests

of the parents to those of the child when evaluating the circumstances surrounding a termination. *Schultz v. Porter Cnty. Off. of Fam. & Child. (In re K.S.)*, 750 N.E.2d 832, 837 (Ind. Ct. App. 2001). Termination of a parent-child relationship is proper where a child's emotional and physical development is threatened. *Id.* Although the right to raise one's own child should not be terminated solely because there is a better home available for the child, parental rights may be terminated when a parent is unable or unwilling to meet his or her parental responsibilities. *Id.* at 836.

[7] Before an involuntary termination of parental rights can occur in Indiana, DCS is required to allege and prove:

(B) that one (1) of the following is true:

(i) There is a reasonable probability that the conditions that resulted in the child's removal or the reasons for placement outside the home of the parents will not be remedied.

(ii) There is a reasonable probability that the continuation of the parent-child relationship poses a threat to the well-being of the child.

\* \* \*

(C) that termination is in the best interests of the child; and

(D) that there is a satisfactory plan for the care and treatment of the child.

Ind. Code § 31-35-2-4(b)(2) (2021). DCS’s “burden of proof in termination of parental rights cases is one of ‘clear and convincing evidence.’” *R.Y. v. Ind. Dep’t of Child Servs. (In re G.Y.)*, 904 N.E.2d 1257, 1260-61 (Ind. 2009) (quoting I.C. § 31-37-14-2).

[8] When reviewing a termination of parental rights, we will not reweigh the evidence or judge the credibility of the witnesses. *Peterson v. Marion Cnty. Off. of Fam. & Child. (In re D.D.)*, 804 N.E.2d 258, 265 (Ind. Ct. App. 2004), *trans. denied*. Instead, we consider only the evidence and reasonable inferences that are most favorable to the judgment. *Id.* Moreover, in deference to the trial court’s unique position to assess the evidence, we will set aside the court’s judgment terminating a parent-child relationship only if it is clearly erroneous. *Judy S. v. Noble Cnty. Off. of Fam. & Child. (In re L.S.)*, 717 N.E.2d 204, 208 (Ind. Ct. App. 1999), *trans. denied*.

[9] Here, in terminating Mother’s parental rights, the juvenile court entered extensive findings of fact and conclusions thereon. When a trial court’s judgment contains special findings and conclusions, we apply a two-tiered standard of review. *Bester v. Lake Cnty. Off. of Fam. & Child.*, 839 N.E.2d 143, 147 (Ind. 2005). First, we determine whether the evidence supports the findings and, second, we determine whether the findings support the judgment. *Id.* “Findings are clearly erroneous only when the record contains no facts to support them either directly or by inference.” *Quillen v. Quillen*, 671 N.E.2d 98, 102 (Ind. 1996). If the evidence and inferences support the trial court’s decision, we must affirm. *In re L.S.*, 717 N.E.2d at 208.

[10] On appeal, Mother contends only that the court erred when it concluded that the conditions that resulted in the Children’s removal from her care will not be remedied. Mother does not challenge the court’s conclusion that there is a reasonable probability that the continuation of the parent-child relationships poses a threat to the well-being of the Children.<sup>2</sup> Because Indiana Code Section 31-35-2-4(b)(2)(B) is written in the disjunctive, Mother’s failure to challenge the second prong of that subsection means she has waived our review of the sufficiency of the evidence to support the court’s conclusion on either prong.

[11] Waiver notwithstanding, Mother has not demonstrated that the court erred when it concluded that Mother will not remedy the conditions that resulted in the Children’s removal. Mother does not challenge any of the trial court’s findings. As such, they are accepted as true. See *L.M. v. Ind. Dep’t of Child. Servs. (In re S.S.)*, 120 N.E.3d 605, 610 (Ind. Ct. App. 2019). And the court’s findings demonstrate that, despite the fact that Mother has had some five years to improve her behavior, she continues to use drugs and commit criminal offenses resulting in her incarceration. Indeed, Mother used methamphetamine as recently as April and June 2021, and she was incarcerated at the time of the

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<sup>2</sup> In one sentence in the last paragraph of her Argument, Mother contends that the court’s conclusion that the continuation of the parent-child relationship poses a threat to the Children’s well-being “was not supported by sufficient evidence.” Appellant’s Br at 13. However, Mother does not develop that contention or support it with cogent argument. Thus, that purported argument is waived. Similarly, while Mother contends in her Summary of the Argument that DCS failed to prove that the termination of her parental rights was in the Children’s best interests, she likewise does not support that bald assertion with cogent argument in her Argument section, and it is waived. In any event, the court’s findings clearly support its conclusion that the continuation of the parent-child relationships poses a threat to the Children’s well being and that the termination of Mother’s parental rights was in the Children’s best interests.

fact-finding hearing. Mother has participated in residential treatment, but she has been discharged for failing to follow the rules or for testing positive for illegal substances. At the time of the fact-finding hearing, Mother was enrolled in a drug court program, but that program had voted to terminate her participation because of her drug use. In addition, Mother had not treated her mental health issues, and by her own admission “refuse[d]” to take some of her prescribed medications. Tr. at 125.

[12] Based on Mother’s incarceration, her lack of stable housing, and her drug use, FCM Evans testified that she had “concerns” regarding Mother’s ability to parent the Children and that she did not believe that the problems that led to their removal were likely to be remedied. *Id.* at 90. Similarly, the CASA testified that she had concerns regarding Mother’s ability to care for the Children because of her “lack of commitment” and her “substance abuse.” *Id.* at 118.

[13] Mother’s argument on appeal is simply an invitation for this Court to reweigh the evidence, which we cannot do. Based on the totality of the circumstances, we hold that the juvenile court’s findings support its conclusion that there is a reasonable probability that the conditions that resulted in the Children’s removal and the reasons for their placement outside of Mother’s home will not be remedied. We therefore affirm the trial court.

[14] Affirmed.

Bradford, C.J., and Bailey, J., concur.